

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Bowen Analyst: Roger Lackey Bill Number: SB 1016  
Related Bills: None Telephone: 845-3627 Amended Date: 04-15-99  
Attorney: Doug Bramhall Sponsor: \_\_\_\_\_

**SUBJECT:** Employee Records/Prohibits Employers From Secretly Monitoring Employees E-Mail Or Other Personal Computer Records

### SUMMARY

This bill would provide that an employer may not secretly monitor the electronic mail or any other personal computer records generated by an employee.

This bill would provide that an employer who intends to inspect, review, or retain any personal electronic mail or any other personal computer records must notify its employees of its electronic monitoring policies and practices and require its employees to sign a statement acknowledging that the employee has read, understood, and agrees to the employer's electronic monitoring policies and practices.

### SUMMARY OF AMENDMENT

The April 15, 1999, amendment eliminated the provision of the bill relating to the disclosure of any personal, nonbusiness related electronic mail of a state or local agency employee, and revised the language regarding an employer's ability to inspect, review or retain any personal electronic mail of its employees.

The department did not complete an analysis of this bill as introduced February 26, 1999.

### EFFECTIVE DATE

This bill would be effective January 1, 2000.

### SPECIFIC FINDINGS

**Under current state law**, the California Public Records Act provides that any person may obtain a copy of any identifiable public record, except records exempt from disclosure, which includes personnel records.

Existing **state law** prohibits a state officer or employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee. State law also requires state agencies to adopt rules governing the application of these laws and to notify state officers and employees of the existence of these laws and their application to the employee upon the employee's employment.

### Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ <u>X</u> PENDING

### Department Director

### Date

**Gerald Goldberg**

**5/12/1999**

**State law** provides that the appointing powers shall determine, with approval from the department, those activities that are inconsistent, incompatible, or in conflict with a state officer or employee's duties. These activities include and are not limited to using state time, facilities, equipment, or supplies for private gain or advantage, and not devoting his or her full time, attention, and efforts to his or her state office or employment during his or her hours of duty as a state officer or employee.

In addition, due to the nature of the confidential services provided by the Franchise Tax Board (FTB), the department has established additional rules of conduct that the department's officers and employees are required to follow or face adverse action relating to their continued employment. These rules of conduct specify that among other activities, a state officer or employee shall not:

- Willfully fail to comply with the income tax laws of the state.
- Disclose confidential information, in writing, electronically or verbally to unauthorized individuals.
- Access, request, acquire or examine confidential tax or non-tax records including personal information unless there is an official need to know.
- Audit, adjust, or collect accounts of family members or friends.
- Audit or investigate a person with whom he or she has a business or personal relationship.
- Intentionally misuse departmental data processing, word processing, or other equipment, facilities, or programs for personal use or in a way that will compromise the effectiveness or adversely impact any program administered by the department.

The department also has established a policy regarding the use of email and the Internet, which are to be used only for business purposes.

**This bill** would prohibit an employer from secretly monitoring the electronic mail or any other personal computer records generated by an employee. This bill would define "secretly monitor" as to inspect, review, or retain electronic mail or other computer records in a manner that does not comply with the policies and practices that are disclosed to the employee.

**This bill** would require that an employer, who intends to inspect, review, or retain any personal electronic mail or any other personal computer records, to notify its employees of its electronic monitoring policies and practices. Notification is required upon commencement of employment for new employees or by March 1, 2000, for existing employees.

**This bill** also would require employees to sign a statement acknowledging that he or she has read, understood, and agrees to the employer's electronic monitoring policies and practices.

In addition, **this bill** would require that the electronic monitoring policies and practices include an employee's right to access any data collected by employer monitoring and the right to dispute and have inaccurate data corrected or deleted.

### Implementation Considerations

FTB is very sensitive to the need to protect the confidentiality of the information handled by its employees, and the department has established specific rules of conduct, in accordance with state law, relating to the activities and actions of the department's officers and employees. Upon employment with the FTB and annually, officers and employees are required to sign a "Statement of Incompatible Activities and Rules of Conduct for Departmental Employees." Under this bill, a similar type of statement could be used as consent to access employee's computer records, etc., if the department found it necessary. The time allowed to develop the statement and ensure that it is signed by every employee should not significantly impact the department.

Upon providing an employee notice of the policies and practices of the employer, the employer would be required to obtain from the employee verification that the employee has read, understood, and agrees to those policies and practices. Requiring an employee to agree could be interpreted as a condition of employment that would seem to conflict with the intent of the bill and, upon implementation, could lead to difficulties and confusion for the employer and employee. Removing the agree requirement from the language of the bill would eliminate possible disputes between employers and employees.

### FISCAL IMPACT

#### Departmental Costs

If the department's ability to investigate potential cases of misconduct is not hampered, this bill would not impact the department's costs.

#### Tax Revenue Estimate

This bill would not impact the state's income tax revenue.

### BOARD POSITION

Pending.